

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

DONALD C. HUTCHINS,
Plaintiff,

Civil Action No. 04-30126-MAP

v.

CARDIAC SCIENCE, INC.,
Defendant.

**DEFENDANT'S MOTION TO DISMISS
UNDER FED. R. CIV. P. 12(b)(1) and 12(b)(6)**

COMES NOW Defendant Cardiac Science, Inc., and hereby moves the Court to dismiss Plaintiff's Complaint under Rule 12(b). The Motion is made on the basis that under Rule 12(b)(1), this Court lacks jurisdiction over the subject matter of counts I, II, III and VI of the Complaint, and under Rule 12(b)(6), Plaintiff failed to state a claim upon which relief can be granted for counts I through VI of his Complaint. The Motion is further based on the attached Memorandum of Law in Support and supporting documents filed herewith.

Respectfully submitted,

CARDIAC SCIENCE, INC.

Dated: August 20, 2004

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CERTIFICATE OF SERVICE

I, PAUL H. ROTHSCILD, hereby certify that on the 20th day of August, 2004, I caused a copy of the foregoing Defendant's Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and to be served upon all interested parties by mailing a copy thereof, postage prepaid, first class mail to: Donald C. Hutchins, 1047 Longmeadow Street, Longmeadow, MA 01106.

/s/Paul H. Rothschild
PAUL H. ROTHSCILD